

REMARKS

I. The Examiner's 112 Rejections

The Examiner alleges that Claims 1 to 3, 7, 9 to 19, 23, 25 and 26 fail to particularly point out and distinctly claim the subject matter of the present invention for a number of reasons each of which is addressed primarily in the order of appearance in the office action. Claims 1, 7, 15 and 16 contain term, "sterol-based," and according to the Examiner, the metes and bounds of the claims are rendered indeterminable by this term. Applicants have referred to page 4 of the specification, wherein at lines 5 to 6, sterol-based surfactants are described as including cholesterol, phytosterols, or derivatives of phytosterol. "An applicant has a right to define what he regards as his invention as he chooses, so long as his definition is reasonably distinct, and supported by an enabling disclosure, as required by the first paragraph of 35 U.S.C. 112." *Ex parte Ohsumi*, 21 USPQ2d 1020, 1024 (BdPatApp&Int 1991)(Markush claim is employed when there is no commonly accepted generic expression commensurate in scope with the field covered); see *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980). One of ordinary skill in the art understands what "sterol-based" means as its meaning is commonly known and it is supported by the present specification. However, in the interest of furthering the prosecution of this application, Applicants amend the claims to specifically point out what the sterol-based surfactant emulsifiers are, and therefore, Applicants request that these rejections be withdrawn.

II. The Examiner's Rejection under 35 U.S.C. §103

In the present Office Action, Claims 1, 2, 7 to 11, 14 to 17, 21, 23, and 25 remain rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,567,420 issued to McElency et al. ("the '420 reference"). Applicants have amended the claims to clarify the compositions of the present invention which are gel-types and not exactly the same as the gels described in the '420 reference regardless of whether it is a non-emulsion or an emulsion. The '420 disclosure makes no mention of a non-emulsion mousse-textured composition containing alkali salts of fatty acid esters like that of the present invention in either its working examples or its specification. Therefore, the '420 reference fails to teach or suggest a non-emulsion mousse-textured composition with alkali salts of fatty acid esters.

Under 35 U.S.C. §103, a case of *prima facie* obviousness requires, *inter alia*, that prior art references when combined teach or suggest the claimed subject matter to one of ordinary skill in the art. *In re Vaeck*, 20 USPQ2d 1438, 1442 (CAFC 1991); *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). Applicants submit herewith a copy from the March and April 1987 CTFA ("the CTFA document") describing formulas for mousses, the April 1987 CTFA is cited by the '420 reference. It is noted that in each CTFA document an alkali metal salt in combination with substantially no oil is not

taught or suggested, and thus, the '420 reference fails to teach non-emulsion mousse-textured compositions as described in the claims of the present invention, as amended. Therefore, one of ordinary skill in the art would understand that the '420 reference fails to teach or suggest the present invention, as amended, of a non-emulsion mousse-textured composition containing substantially no oil and containing an alkali salt of a fatty acid ester. Applicants request that the obviousness rejection based on the '420 reference be withdrawn.

In addition, the Examiner finds the present invention obvious in view of the '420 reference or the '049 reference in combination with U.S. Patent No. 5,424,070 ("the '070 reference"). Claims 3, 18, and 23 of the present invention describe a fatty acid that is in particular behenic acid or an alkali metal salt of behenic acid (e.g., sodium behenate). The '070 reference teaches transparent clear stick compositions and fails to remedy any of the defects in the '420 and the '049 references, and in particular, fails to motivate one of ordinary skill in the art to substitute the fatty acid soaps of the '420 and '049 references with those taught in the '070 reference because the transparent clear stick of the '070 reference is unlike the '420 and the '049 compositions. The qualities and capabilities of a fatty acid soap as a gelling agent for a stick product is quite different than the presence of a fatty acid soap in the compositions of the '420 and the '049 references as an emulsifier. For example, the disclosure of fatty acid soaps in the '420 reference at column 6, lines 25 to 31, are to enhance the blending of ingredients, and not as the '420 gelling agent.

Similarly, the '049 reference fails to teach or suggest stick compositions, and therefore, one of ordinary skill in the art would not expect reasonable success making the '049 compositions with the gelling agent of the '070 reference. Further, as previously explained, the '070 reference does not teach that any fatty acid soap is equivalent or substitutable, especially when making different types of products, i.e., a gel versus a stick. The Examiner has failed to provide the source of this alleged disclosure. The compositions of the present invention, as amended, are non-emulsion mousse-textured compositions containing an alkali salt of a fatty acid ester and containing substantially no oil. The other components of the mousse-textured compositions are an aliphatic polyhydric alcohol, a sterol-based surfactant/emulsifier, and water. The compositions taught in the '420 and the '049 references are unlike that of the '070 reference, therefore, unless one was making a stick product, there is no motivation for one of ordinary skill in the art to make the combination asserted by the Examiner. And, even if one were making a stick product and made the substitution suggested by the Examiner, one of ordinary skill in the art would not expect to produce the present compositions having the mousse-texture. Stick compositions are distinct from mousse-textured compositions, and one of ordinary skill in the art would recognize the difference between the two. As presented above, the '420 reference, alone or in combination with the

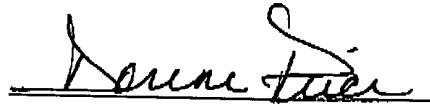
'070 reference, fails to teach or suggest the present invention because they fail to teach or suggest a mousse-textured composition containing substantially no oil and containing an alkali salt of a fatty acid ester, and Applicants request that the §103 rejections be withdrawn.

CONCLUSION

In view of the arguments presented above in the present submission, the claims are believed to be in condition for allowance, and issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,

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MARKED AMENDMENTS

1. (Amended) A non-emulsion topical [gel] mousse-textured composition comprising an aliphatic polyhydric alcohol, an alkali salt of a fatty acid ester or an amine salt of a fatty acid ester, a [carbohydrate-based or] sterol-based surfactant/emulsifier selected from the group consisting of cholesterol, phytosterol and derivatives [or combination] thereof, water, and substantially no oil.

7. (Amended) The composition of claim 1 [in which the] further comprising a surfactant/emulsifier that is carbohydrate-based [sterol-based].

8. (Amended) The composition of claim 7 in which the surfactant/emulsifier is [cholesterol or a phytosterol] selected from the group consisting of PPG-20 methyl glucose ether, PPG-20 methyl glucose distearate, methyl gluceth 10, methyl gluceth 20, glyceryl monostearate, sucrose distearate, or PEG 120 methyl glucose dioleate, in place of PPG-20 methyl glucose ether.

15. (Amended) A non-emulsion, topical [gel] mousse-textured composition comprising

(c) from about 10 to about 40% of an aliphatic polyhydric alcohol;

(f) from about 1 to about 15% of an amine salt of a fatty acid or an alkali metal salt of a fatty acid;

(g) from about 1 to about 10% of a sterol- [or carbohydrate-]based surfactant/emulsifier selected from the group consisting of cholesterol, phytosterol and derivatives thereof;

(h) from about 20 to about 60% of water;

the composition containing substantially no oil.

16. (Amended) The composition of claim 15 comprising

(e) from about 10 to about 25 % of an aliphatic polyhydric alcohol;

(f) from about 1 to about 6% of an amine salt of a fatty acid or an alkali metal salt of a fatty acid;

(g) from about 2 to about 6% of a sterol- [or carbohydrate-]based surfactant selected from the group consisting of cholesterol, phytosterol and derivatives thereof;

(h) from about 20 to about 60% of water;

the composition containing substantially no oil.

21. (Amended) The composition of claim 15 [in which the] further comprising a surfactant/emulsifier that is [cholesterol or a phytosterol] selected from the group consisting of PPG-20 methyl glucose ether, PPG-20 methyl glucose distearate, methyl gluceth 10, methyl gluceth 20, glyceryl monostearate, sucrose distearate, or PEG 120 methyl glucose diolate.

Mousses BEST AVAILABLE COPY

Protective Hair Conditioner

(Van Dyk)

Dimethyl PABA ethyl cetearyldimonium tosylate is a cationic substantive UV absorber, and it is designed to protect hair from UVB radiation.

	%
Glyquatonium-4, 2% solution	50.0
Alcohol 40	30.0
Cetearyl alcohol (and) ceteareth-20 (Promulgen D) (8)	2.0
Water	17.5
Dimethyl PABA ethyl cetearyldimonium tosylate (Escalol 5370) (5)	0.5

Procedure: Combine all ingredients and heat to 70-75°C. Mix until uniform. Cool with mixing to room temperature and fill, 95% concentrate and 5% propellant A-46.

Sunscreen Mousse

(BASF)

The convenient mousse formulation emulsified with ceteareth-25 gives broad UV protection against UVA and UVB, while still maintaining both emolliency from the cetearyl octanoate and the anti-inflammatory of the bisabolol.

	%
Ceteareth-25 (Cremophor A25) (21)	1.0
Cetearyl octanoate (Luvitol EHO) (21)	3.0
Stearic acid	3.0
Cetyl alcohol	1.0
Caprylic/capric triglyceride (Miglyol B12) (22)	2.0
Bisabolol (+)-α-bisabolol rac. (21)	0.2
Benzophenone-3 (Uvinul M40) (21)	3.0
Benzophenone-4 (Uvinul MS40) (21)	3.0
Propylene glycol (1,2 Propylene Glycol USP) (21)	2.0
Triethanolamine (Triethanolamine Pure C) (21)	1.8
Preservative	0.5
Perfume	0.3
Water	78.7

Procedure: Mix together the oil phase including the emulsifier and the benzophenone-3 and heat to 75°C. Mix separately the water phase including the benzophenone-4 and triethanolamine and heat to 75°C. Then add the water phase to the oil phase while stirring thoroughly. Stir while cooling to room temperature. Add the perfume and preservative. Pressurize afterwards.

Sunscreen Mousse

(BASF)

The convenient mousse formulation is emulsified with ceteareth-25 and gives broad UV protection against UVA and UVB, while still maintaining both emolliency from the cetearyl octanoate and the anti-inflammatory of the bisabolol.

	%
Ceteareth-25 (Cremophor A25) (21)	1.0
Cetearyl octanoate (Luvitol EHO) (21)	3.0
Stearic acid	3.0
Cetyl alcohol	1.0
Caprylic/capric triglyceride (Miglyol B12) (22)	2.0
Bisabolol (21)	0.2
Benzophenone-3 (Uvinul M40) (21)	3.0
Benzophenone-4 (Uvinul MS40) (21)	3.0
Propylene glycol	2.0
Triethanolamine	1.8
Preservative	0.5
Perfume	0.3
Water	78.7

Procedure: Mix together the oil phase including the emulsifier and the benzophenone-3 and heat to 75°C. Mix separately the water phase including the benzophenone-4 and triethanolamine and heat to 75°C. Then add the water phase to the oil phase while stirring thoroughly. Stir while cooling to room temperature. Add the perfume and preservative. Pressurize afterwards.

Skin Mousse

(Van Dyk)

This is a non-comedogenic mousse with octyl dimethyl PABA as sun protectant.

	%
Water	76.0
Propylene glycol	5.0
Quaternium-26 (Ceraquat 65) (5)	5.0
Octyl dimethyl PABA (Escalol 501) (5)	2.0
Cetyl alcohol	1.0
Stearamidopropyl cetearyldimonium tosylate (and) propylene glycol (Ceraquat 65) (5)	2.0
Mineral oil	5.0
Preservative	1.0

Procedure: Combine all ingredients except preservative and heat to 80°C. Cool to 50°C and add the preservative. Cool to room temperature. Fill 95% concentrate and 5% propellant A-46.

Powder Facial Mask (Croda)

This is a finely blended facial mask which has an excellent tightening effect within five minutes. The silk powder leaves a pleasant skin feel even after rinsing. The avocadamidopropyl betaine makes wash-off easy.

	%
Hydrolyzed animal protein (Crotein SPA) (51)	5.00
Silk powder (Crosilk Powder) (51)	2.00
Egg albumen	63.80
Cornstarch	22.00
Silica powder	5.00
Aloe gel, powdered	1.00
Allantoin (15)	0.70
Methylparaben	0.30
Germa 1115 (15)	0.20

Procedure: Combine egg albumen, cornstarch and silica and pulverize in blender until well mixed. Add remaining ingredients except proteins and blend well. Disperse proteins and pulverize to fine powder.

Powder Mask Activator

	%
Water	95.30
Cocodimonium hydrolyzed animal protein (Croquat M) (51)	0.50
Avocadamidopropyl betaine (Incronam AV-30C6) (51)	0.50
Honey	1.20
Aloe vera liquid	1.00
Cucumber extract (Lipofruit) (43)	0.50
Germa 1115 (15)	1.00

Procedure: Dissolve preservative in water. When uniform, add betaine. Next dissolve aloe, honey and cucumber extract. Mix well. Add protein. Adjust pH to 7.2 ± 0.1 with 10% triethanolamine.

Combine powder and activator at 1:1 ratio.

Moisturizing Gel (Seppan)

	%
Isobornyl myristate (33)	12.5
PEG-400 monobehenate (51)	12.2
PEG-400 monolaurate (31)	4.8
Glycerol monodistearate (31)	2.0
Propylene glycol	5.5
Proderm N-3 Neutral (51)	5.5
Glycerin	3.7
Aloe juice	2.0
Deionized water	51.7
Triethanolamine	q.s. to pH 6.8-7.2
Preservative	0.1

Procedure: Combine (A) ingredients and heat to 85°C. Combine (B) ingredients and heat to 80°C. Mix (B) slowly add (B) to (A). Mix well and package.

Skin Mousse (Van Dyk)

The Ceraphyl 85 is a cationic material which provides noticeable skin smoothing and emolliency.

	%
A. Deionized water	55.9
Hydroxypropyl methylcellulose (Methocel K44) (26)	0.1
Propylene glycol	7.5
Cetearyl alcohol (and) ceteareth-20 (Promulgen D) (8)	3.0
Stearamidopropyl cetearyl dimonium tosylate (and) propylene glycol (Ceraphyl 85) (51)	2.0
Isodecyl oleate (Ceraphyl 140-A) (5)	20.0
B. Special hydrolyzed collagen (and) acetamide MEA (and) collagen amino acids (and) silk amino acids (and) hydrolyzed elastin (Collamino Complex ESC) (29)	0.5
Diazolidinyl urea (and) methylparaben (and) propylparaben (and) propylene glycol (Germa 1115) (15)	1.0
SD alcohol 40	20.0

Procedure: Disperse the hydroxypropyl methylcellulose in water and heat to 80°C. Add rest of (A) and cool to 45°C. Add (B), one at a time, mixing well after each addition. Cool to room temperature and fill to 95% concentrate and 5% propellant A-46.

Cream Soap (Centerchem)

	%
A. Lauric acid (Mytsteren 9512) (32)	2.00
Myristic acid (Mytsteren 9014) (32)	2.00
Glycerol monostearate, pure	2.00
PEG-40 hydrogenated castor oil PCA Isostearate (Pyrotex EP-30) (56) (49)	4.00
Sodium cocoyl sarcosinate (Handasy I-30) (62)	10.00
Palm Kernel amide DEA (Accomid PK) (54) (49)	2.00
Caprylic/Lauric triglyceride (Captex 300) (54) (49)	8.00
Propylparaben	0.70
B. Water	28.15
Sodium PCA (Aldew M-50) (56) (49)	4.00
Sodium myristoyl glutamate (Abylgutamate MS-11) (56) (49)	15.00
Methylparaben	0.25
PDE(26) glyceryl ether (Alconon ETE) (54) (49)	25.00

Procedure: Weigh and heat (A) and (B) separately to 75°C. Covering phases while heating. With view to moderate proper agitation, add (A) to (B). Mix for 10 minutes and begin force cooling. Continue mixing to 25°C.